

FOSTER Employment Law
3000 Lakeshore Avenue
Oakland, California 94610

MICHAEL W. FOSTER (State Bar No. 127691)
DAVID J. CARDIFF (State Bar No. 184246)
EMILY R. EPSTEIN (State Bar No. 215654)
FOSTER EMPLOYMENT LAW
3000 LAKESHORE AVENUE
OAKLAND, CALIFORNIA 94610
TELEPHONE: (510) 763-1900
FACSIMILE: (510) 763-5952

Attorneys for Defendant
LEVI STRAUSS & CO.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAY SHUMAN,
Plaintiff,

vs.

LEVI STRAUSS & CO.,
Defendant.

) Case No. CV-09-0003 WHA
)
) Date Action Filed: January 2, 2009
)
) **STIPULATION AND [PROPOSED]**
) **ORDER OF DISMISSAL, SUBJECT TO**
) **REFILING OF CLAIMS IN STATE**
) **COURT**
)
)
)

THE PARTIES, BY AND THROUGH THEIR ATTORNEYS OF RECORD, HEREBY
STIPULATE AS FOLLOWS:

WHEREAS, on or about June 23, 2008, plaintiff filed a state court lawsuit alleging state
court claims relating to his employment with defendant and the termination of said employment,
County of San Francisco Case No. CGC-08-476646 (the "State Case"); and

WHEREAS, on or about January 2, 2009, plaintiff filed the instant action in federal court,
alleging a federal cause of action under the Americans with Disabilities Act ("ADA") relating to the

1 same issues and decisions regarding his employment with defendant and the termination of said
2 employment; and

3 WHEREAS, on or about April 30, 2009, the State Case, which had been removed by
4 defendant, was remanded back to state court; and

5 WHEREAS, given the foregoing developments, the parties mutually desire to consolidate
6 plaintiff's state and federal claims, as presently set forth in plaintiff's operative pleadings in federal
7 and state courts, in a single forum, in San Francisco Superior Court; and

8 WHEREAS, in order to accomplish such consolidation, plaintiff agrees to voluntarily dismiss
9 the instant federal action, and to amend the state court complaint so as to incorporate the federal
10 claim he has pleaded in this action, subject to defendant's agreement, and this court's order, that by
11 so doing plaintiff's ability to plead the federal claim in state court shall not be prejudiced or
12 adversely affected in any way, that defendant will not oppose plaintiff's amendment of his state
13 court pleading to add the federal claim presently pleaded in this action, and that, upon plaintiff filing
14 the amended pleading in state court that is attached hereto as Exhibit "1," to add the federal claim
15 presently pleaded in this action, defendant will waive, and agrees not to assert, the right to remove
16 the state court action to federal court on grounds that the amended state court pleading that is
17 attached hereto as Exhibit "1" creates federal question jurisdiction with respect to the state court
18 action;

19 NOW THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

20 1. Dismissal. Plaintiff hereby voluntarily dismisses the instant action, subject to the
21 following terms and conditions, and an order of this court approving the dismissal.

22 2. Refiling/Amendment. Plaintiff shall be permitted to amend the State Case to include
23 the federal ADA claim alleged in this case by filing in state court the amended pleading that is
24 attached hereto as Exhibit "1." Defendant shall not oppose the filing of such amended pleading and
25 hereby waives any and all grounds for opposition to the filing of said amended pleading. Defendant
26 agrees to execute a stipulation for the filing of said amended pleading.

27 3. No prejudice to plaintiff. Plaintiff's ability to plead his federal ADA claim shall not
28

1 be adversely effected in any way by the transfer of his federal claims to state court through this
 2 process. Defendant shall not assert untimeliness, statute of limitations, or any other ground that
 3 would not have existed had plaintiff originally filed his federal claim in state court, and defendant
 4 hereby waives any and all such grounds.

5 4. No further removal. Upon plaintiff's filing of the proposed amended pleading that is
 6 attached hereto as Exhibit "I" defendant stipulates that it will not remove to federal court, and that it
 7 is prohibited from so removing, the state court action on the grounds that the amended pleading that
 8 is attached hereto as Exhibit "I" creates federal question jurisdiction over the state court action.
 9 Defendant further stipulates that, if plaintiff's filing of an amended pleading in state court as agreed
 10 herein is limited to adding to the pending state court action the federal ADA claim that is presently
 11 pleaded in this action by the filing of the amended pleading that is attached hereto as Exhibit "I,"
 12 defendant will not seek to remove the case on any grounds. By this agreement, defendant does not
 13 waive the right to seek removal based on any amendments to the pleadings other than those
 14 discussed herein, and should plaintiff attempt to amend his state court pleading to add any additional
 15 cause(s) of action(s) or to name additional defendant(s) that may confer federal jurisdiction over the
 16 matter, defendant reserves the right to timely seek removal of the action in response to such an
 17 amended pleading.

18 SO STIPULATED:

19 May 7, 2009

ROSS & MORRISON

20 By: 

21 Gary B. Ross

22 Andrew D. Morrison

23 Attorneys for Plaintiff

24 May 7, 2009

FOSTER EMPLOYMENT LAW

25 By: 

26 Michael W. Foster

27 David J. Cardiff

28 Attorneys for Defendant

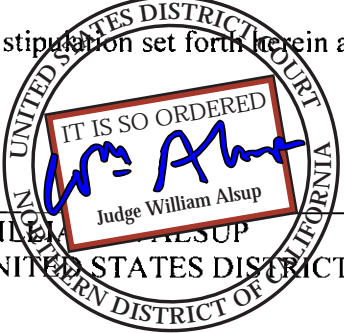
ORDER

The Court, having reviewed the stipulation of the parties for dismissal of the action, hereby orders the case dismissed according to the terms of the stipulation set forth herein above.

IT IS SO ORDERED.

Dated: May 12, 2009

By:


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

FOSTER Employment Law
3000 Lakeshore Avenue
Oakland, California 94610

EXHIBIT 1

to Stipulation

ROSS & MORRISON

Gary B. Ross (SBN 121691)
 Andrew D. Morrison (SBN 144216)
 315 S. Beverly Drive, Suite 410
 Beverly Hills, CA 90212
 Ph.: 310.285.0391; Fax: 310.285.6083
 www.rossandmorrison.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

JAY SHUMAN,	)	CASE NO. CGC-08-476646
)	
Plaintiff,	)	<u>SECOND AMENDED COMPLAINT:</u>
v.)	
	)	1. VIOLATION OF FEHA:
LEVI STRAUSS & CO.; and DOES 1-	)	DISABILITY DISCRIMINATION;
100,	)	FAILURE TO ACCOMMODATE;
	)	INTERACTIVE PROCESS
Defendants.	)	2. WRONGFUL TERMINATION
	)	3. WRONGFUL DEMOTION
	)	4. INTL. INFL. OF EM. DIST.
	)	5. NEGL. INFL. OF EM. DIST.
	)	6. VIOLATION OF ADA

Summary. This is an action for disability discrimination, failure to accommodate and related claims. Plaintiff was employed by Levi's for nearly 25 years, attaining Senior Account Planner status. However, when plaintiff was diagnosed with severe depression, Levi's failed to accommodate or support him, resulting in a breakdown forcing him to take a leave of absence. When plaintiff returned from leave, Levi's continued to refuse accommodation, and instead summarily demoted plaintiff from his Senior Account Planner status, and cut his compensation in half. When plaintiff complained, defendant subjected him to a campaign of retaliation, obstruction, punishment and false criticism; culminating in his termination on or about June 24, 2008.

1 Plaintiff alleges:

2 IDENTIFICATION OF PARTIES

3 1. Plaintiff. Plaintiff is an individual formerly
4 residing in Knoxville, Tennessee.

5 2. Defendant Levi's. Defendant Levi Strauss & Co.
6 ("Levi's") is a corporation, headquartered and with its principal
7 place of business in San Francisco County, California.

8 3. Doe defendants. Defendants Doe 1-100 are named
9 fictitiously. Plaintiff will amend to plead the names of such
10 defendants when known. Each Doe defendant was responsible for
11 the events and damages alleged herein, including, without
12 limitation, on the following bases:

13 a. At all relevant times, one or more of the
14 defendant(s) was the agent or employee, and/or acted under the
15 control or supervision of, one or more of the remaining
16 defendants and, in doing the acts alleged, acted within the
17 course and scope of such agency and employment, and/or is
18 otherwise liable for plaintiff's damages; and/or

19 b. At all relevant times there existed a unity of
20 ownership and interest between two or more of the defendants,
21 such that any individuality and separateness between said
22 defendants has ceased, and defendants are the alter ego(s) of one
23 another. The defendants exercised domination and control over
24 one another, to such an extent that any individuality or
25 separateness of defendants does not, and at all times herein
26 mentioned did not, exist. Adherence to the fiction of separate
27 existence of the defendants would permit abuse of the corporate
28 privilege and would sanction fraud and promote injustice.

1 4. "Defendant." The named defendant(s) and Doe
2 defendants are sometimes hereafter referred to (collectively
3 and/or individually) as "defendant."

4 FACTS COMMON TO ALL CAUSES OF ACTION

5 5. Plaintiff's hiring. Plaintiff began work for defendant
6 on or about September 12, 1983 in Menswear Sales, enjoying a
7 successful career of well over 20 years, and attaining Senior
8 Account Planner status.

9 6. Plaintiff's disability/leave. In or about Fall 2006,
10 plaintiff was diagnosed as suffering a mental disability (severe
11 depression), resulting in a breakdown forcing him to take a leave
12 of absence in or about April 2007. Throughout this time
13 defendant failed to accommodate plaintiff's mental disability.

14 7. Plaintiff's return/defendant's failure to accommodate.
15 In or about August, 2007, when plaintiff returned from leave,
16 Levi's continued to refuse accommodation, including without
17 limitation adjusting plaintiff's work schedule, permitting
18 plaintiff to work from home, providing support/staffing, and/or
19 other accommodations.

20 8. Demotion. Instead defendant summarily demoted
21 plaintiff from his Senior Account Planner position, and cut
22 his compensation roughly in half.

23 9. Retaliation. When plaintiff complained, defendant
24 engaged in a campaign of retaliation, obstruction, punishment and
25 false criticism against plaintiff.

26 10. Termination. Defendant terminated plaintiff's
27 employment, based on false and pretextual grounds, on or about
28 June 24, 2008.

1 11. Motivating factor. Plaintiff's disability, request for
2 accommodation, and/or other protected characteristic(s) were
3 motivating factor(s) in defendant's job action(s) against him.

12. Economic damages. As a consequence of defendant's conduct, plaintiff has suffered and will suffer harm, including, without limitation, lost past and future income and employment benefits; and damage to career, in a sum to be proven at trial.

13. Non-Economic damages. As a consequence of defendant's conduct, plaintiff has suffered and will suffer psychological and emotional distress, including physical symptoms, in a sum to be proven at trial.

2 14. Punitive damages. Defendant is guilty of oppression,
3 fraud or malice under California Civil Code Section 3294, so as
4 to entitle plaintiff to an award of exemplary/punitive damages.

15. Exhaustion of administrative remedies. Prior to filing this action, plaintiff exhausted administrative remedies, by timely filing administrative complaints with the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission.

0	FIRST CAUSE OF ACTION
0	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	
91	
92	
93	
94	
95	
96	
97	
98	
99	

1 Violation of FEHA, Cal. Govt. Code §§ 12900 et seq.

2 Against All Defendants

3 || 16. Paragraphs 1-15 are incorporated.

17. Plaintiff's disability and/or request for accommodation were motivating factors in defendant's decisions to terminate plaintiff, demote plaintiff, reduce his pay, refusal to accommodate, and/or taking other adverse job action(s) against plaintiff.

1 18. Defendant's conduct, as alleged, violated the
2 California Fair Employment and Housing Act, Cal. Govt. Code §§
3 12900, et seq. ("FEHA") and defendant committed unlawful
4 employment practice(s), including, without limitation, by the
5 following, separate bases for liability:

- 6 a. Terminating, barring, discharging, refusing to
7 transfer, retain, hire, select, train, and/or
8 employ; and/or otherwise discriminating against
9 plaintiff, based, in whole or in part, on his
10 mental disability or other protected
11 characteristic, in violation of Cal. Govt. Code §
12 12940(a).
- 13 b. Failing to accommodate plaintiff's disability,
14 including, without limitation, by failure to
15 modify plaintiff's work conditions/schedule; or
16 other reasonable accommodation(s), in violation of
17 Cal. Govt. Code § 12940(m).
- 18 c. Failing to engage in a timely, good faith
19 interactive process to determine reasonable
20 accommodation, in violation of Cal. Govt. Code §
21 12940(n).
- 22 d. Failing to take all reasonable steps to prevent
23 discrimination, in violation of Cal. Govt. Code §
24 12940(k).
- 25 e. Harassing plaintiff based on his mental
26 disability, in violation of Cal. Govt. Code §
27 12940(j).
- 28 f. Retaliating against plaintiff for seeking to

1 exercise rights guaranteed under the FEHA,
2 including right of reasonable accommodation,
3 interactive process, and requesting leave, in
4 violation of Cal. Govt. Code § 12940(h).

5 g. Failing to provide plaintiff with requisite
6 statutory leave; violating notice and/or other
7 procedural requisites of leave; and/or retaliating
8 against plaintiff for taking leave, in violation
9 of Cal. Govt. Code § 12945.2.

10 SECOND CAUSE OF ACTION

11 Wrongful Termination in Violation of Public Policy

12 Against All Defendants

13 19. Paragraphs 1-18 are incorporated.

14 20. Public policy of the State of California (as evinced,
15 inter alia, in the FEHA) prohibits job discrimination on the
16 basis of an employee's disability, request for accommodation,
17 interactive process, and/or taking leave; and prohibits
18 retaliation against employees who exercise such rights.

19 21. Defendant's termination of plaintiff's employment
20 violated said policy(ies) of the State of California.

21 THIRD CAUSE OF ACTION

22 Wrongful Demotion in Violation of Public Policy

23 Against All Defendants

24 22. Paragraphs 1-21 are incorporated.

25 23. Public policy of the State of California (as evinced,
26 inter alia, in the FEHA) prohibits job discrimination on the
27 basis of an employee's disability, request for accommodation,
28 interactive process, and/or taking leave; and prohibits

1 retaliation against employees who exercise such rights.

2 24. Defendant's demotion of plaintiff, and/or other adverse
3 job action(s) against him, violated said policy(ies) of the State
4 of California.

5 FOURTH CAUSE OF ACTION

6 Intentional Infliction of Emotional Distress

7 Against All Defendants

8 25. Paragraphs 1-24 are incorporated.

9 26. Defendant was aware that treating plaintiff in the
10 manner alleged above, including depriving and/or substantial
11 impairing his livelihood, while treating/recuperating from severe
12 depression, would devastate plaintiff and cause extreme hardship
13 and aggravate his emotional condition.

14 27. Defendant's conduct, as described above, was extreme
15 and outrageous and was done with the intent of, and effect of,
16 causing plaintiff to suffer emotional distress.

17 FIFTH CAUSE OF ACTION

18 Negligent Infliction of Emotional Distress

19 Against All Defendants

20 28. Paragraphs 1-27 are incorporated.

21 29. In the alternative, defendant's conduct, as alleged
22 above, was done in a careless or negligent manner, without
23 consideration for the effect such conduct would have upon
24 plaintiff's person, including upon plaintiff's emotional/physical
25 well-being.

26 / / /

27 / / /

28 / / /

SIXTH CAUSE OF ACTION

Violation of the ADA, 42 U.S.C. § 12101, et seq.

Against All Defendants

30. Paragraphs 1-29 are incorporated.

31. Plaintiff is a qualified individual with a disability as defined in 42 U.S.C. § 12111(8).

32. Defendant is a covered entity/employer as defined in 42 U.S.C. § 12111(5).

33. Plaintiff's disability and/or request for accommodation were motivating factors in defendant's decisions to terminate plaintiff, demote plaintiff, reduce his pay, refusal to accommodate, and/or taking other adverse job action(s) against plaintiff, constituting discrimination as defined in 42 U.S.C. § 12112.

34. Defendant's conduct, as alleged, violated the ADA including, without limitation, by the following, separate bases for liability:

- a. Terminating, barring, discharging, refusing to transfer, retain, hire, select, train, and/or employ; and/or otherwise discriminating against plaintiff, based, in whole or in part, on his mental disability or other protected characteristic, in violation of the ADA.
- b. Failing to accommodate plaintiff's disability, including, without limitation, by failure to modify plaintiff's work conditions/schedule; or other reasonable accommodation(s), in violation of the ADA.

- c. Harassing plaintiff based on his mental disability, in violation of the ADA.
- d. Retaliating against plaintiff for seeking to exercise rights guaranteed under the ADA, including right of reasonable accommodation in violation of 42 U.S.C. § 12203.

PRAYER

WHEREFORE, plaintiff prays for judgment as follows:

1. For compensatory economic and non-economic damages, in an amount to be proven at trial;
2. For punitive damages, according to proof;
3. For prejudgment interest;
4. For injunctive relief against defendants;
5. For costs of suit, including reasonable attorneys' fees;
6. For such other relief the Court deems proper.

May 7, 2009

ROSS & MORRISON

By: _____

Gary B. Ross
Andrew D. Morrison
Attorneys for Plaintiff